Supreme Court, U.S.
FILED
06-296 AUG 29 2006
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No. 06-

IN THE

Supreme Court of the United States

ARTICLE II GUN SHOP, INC.,
d/b/a GUN WORLD

Petitioner

v.

ALBERTO GONZALES,

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the term "willfully" as used in 18 U.S.C. § 923(e) (authorizing revocation of a firearm dealer's license for willful violations) has the same meaning as the term "willfully" as used in 18 U.S.C. § 924(a)(1), which this Court interpreted in *Bryan* v. *United States*, 524 U.S. 184 (1998) to mean that person must act intentionally and purposely and with the intent to do something the law forbids, where both terms were enacted by the Firearms Owners Protection Act of 1986?

PARTIES TO THE PROCEEDING

The parties are Article II Gun Shop, Inc., d/b/a Gun World, an Illinois corporation with its principal place of business in the State of Illinois. Article II Gun Shop, Inc. has no parent corporation and no publicly held company owns any of the corporation's stock.

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OPINION BELOW

The Opinion of the United States Court of Appeals for the Seventh Circuit affirming the judgment revoking Petitioner's firearms dealer license was published at 441 F.3d 492 (7th Cir. 2006) and is printed in the Appendix ("App.") at App. 1a.

JURISDICTION

The United States Court of Appeals for the Seventh Circuit affirmed the judgment revoking Petitioner's firearms dealer license on March 20, 2006. App. 1a. A timely filed Petition for Rehearing En Banc was denied on May 16, 2006. App. 16a. This Court has jurisdiction under 28 U.S.C. § 1254(l).

STATUTES

18 U.S.C. § 923(e) provides in pertinent part:

> The Attorney General may, after notice and opportunity for hearing, revoke any license issued under this section if the holder of such license has **willfully** violated any provision of this chapter or any rule or regulation prescribed by the Attorney General under this chapter. (emphasis added).

18 U.S.C. § 924(a)(1) provides in pertinent part:

> (1) Except as otherwise provided in this subsection, subsection (b), (c), or (f) of this section, or in section 929, whoever -
>
> (A) knowingly makes any false statement or

representation with respect to the information required by this chapter to be kept in the records of a person licensed under this chapter or in applying for any license or exemption or relief from disability under the provisions of this chapter;

(B) knowingly violates subsection (a)(4), (f), (k), (r), (v), or (w) of section 922;

(C) knowingly imports or brings into the United States or any possession thereof any firearm or ammunition in violation of section 922(l); or

(D) **willfully** violates any other provision of this chapter,

shall be fined under this title, imprisoned not more than five years, or both. (emphasis added).

STATEMENT OF THE CASE

Proceedings in the Courts Below

Following receipt of a Final Notice of Denial of Application or Revocation of Firearms License (hereinafter "Final Notice") from the Director of Industry Operations ("DIO") for the Chicago Field Division of the Bureau of Alcohol, Tobacco, Firearms & Explosives ("ATF") notifying Gun World that its federal license as a dealer in firearms, other than destructive devices, was revoked, Gun World timely filed a Petition For Judicial Review, pursuant to 18 U.S.C. §

923(f)(3),[1] seeking *de novo* judicial review of the five (5) counts which were the basis of the revocation.[2]

Following discovery, the Government filed a motion for summary judgment only with respect to Counts 2 and 3 of the Petition For Judicial Review. Count 2 alleged that Gun World had not engaged in an unlawful "strawman" sale as found by the DIO; Count 3 alleged that Gun World had not "willfully" violated record-keeping requirements with respect to fifteen (15) Forms 4473 as found by the DIO. Gun World filed an opposition to the Government's summary judgment motion, asserting, *inter alia*, that, with respect to Count 2, there were genuine issues of material facts, precluding summary judgment. Gun World also asserted, with respect to Count 3, that the Government's motion referred only to twelve (12) of the fifteen (15) Forms 4473. To support its opposition, Gun World filed affidavits of Barry Soskin and Elizabeth Rodgers. In its reply,

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[1] After receiving notice of a final revocation, a licensee:

> may at any time within sixty days after the date notice was given under this paragraph file a petition with the United States district court for the district in which he resides or has his principal place of business for a de novo judicial review of such denial or revocation.

18 U.S.C. § 923(f)(3).

[2] Each count alleged a "willful" violation of a provision of the applicable regulations. Counts 1 and 2 each alleged a single "strawman" sale, Count 3 alleged improper maintenance of sixteen (16) ATF Forms 4473 (the form that is completed by the purchaser and the licensee when a firearm is sold by a licensee), Count 4 alleged inadequately documented sales to legal aliens, and Count 5 alleged improper maintenance of disposition records.

the Government withdrew its motion for summary judgment to the extent it was based on Count 2 (the alleged "strawman" sale); it did not dispute that its motion referred to only twelve (12) ATF Forms 4473. In response to the district court's inquiry whether the DIO would have revoked Gun World's license based only on the alleged omissions in the Forms 4473, the Government filed an affidavit of the DIO stating that he would have revoked the license based only upon those alleged omissions. Thus, the only issue before the district court was whether the alleged errors in the twelve (12) ATF Forms 4473 were a sufficient basis upon which to have revoked Gun World's license.

By Memorandum Opinion And Order of March 25, 2005, the district court granted the Government's motion for summary judgment; judgment was entered in favor of the Government on the same date. On or about April 8, 2005, Gun World timely filed a motion to alter or amend the judgment. The district court denied the motion on April 15, 2005 in a Statement. Gun World timely filed a notice of appeal.

In a published opinion, the United States Court of Appeals for the Seventh Circuit, on March 20, 2006, affirmed the district court's judgment, with one judge dissenting. App. 1a. A timely filed petition for rehearing *en banc* was denied on May 16, 2006. App. 16a.

Statement of Facts

The twelve (12) Forms 4473 were alleged to have violated 27 C.F.R. § 478.124(c) for the following reasons.

Sale to Thomas Leischner (1/4/99): Gun World "failed

to provide the response initially provided by NICS [the national instant background check system] or the appropriate agency as required by Item 12c of Form 4473." Notice of Revocation of License at ¶ 1. The information that was provided on the Form 4473 by Gun World indicates that the NICS check resulted in an immediate approval because the number in block 12b starts with an "A" for approval, which is the same as a "proceed." Affidavit of Elizabeth Rodgers at ¶ 2. If the NICS check had been denied, the number would start with a "D"; if it had been delayed, the number would start with a "T". *Id.*

Sale to Constantine Giovan (1/29/99): Gun World "failed to obtain a response to whether the transferee had ever been adjudicated mentally defective or been committed to a mental institution as required by Item 9f of Form 4473." Notice of Revocation of License at ¶ 2. Mr. Giovan had been a repeat customer of Gun World for years and had never indicated on a Form 4473 that he had been adjudicated mentally defective or been committed to a mental institution. Affidavit of Elizabeth Rodgers at ¶ 3. When it was discovered that he had not answered one question on the Form 4473, he was asked to provide that one answer, which he did. *Id.* In the time that Mr. Giovan has been known to Gun World, no purchase has ever been denied by the state police. *Id.* Additionally, when the NICS check was done (the same day that Mr. Giovan executed the form), the response was "Proceed." *Id.* There was no evidence that Mr. Giovan had, in fact, been adjudicated mentally defective or committed to a mental institution.

Sale on February 3, 1999 to James Finkle: Gun World "failed to obtain a response to whether the transferee had ever been adjudicated mentally defective or been committed to a

mental institution as required by Item 9f of Form 4473." Notice of Revocation of License at ¶ 3. That information was on another Form 4473 for the sale of another firearm also completed on February 3. Affidavit of Elizabeth Rodgers at ¶ 4. Further, on February 3, Gun World received a "Proceed" response when the NICS check was done. *Id.* There was no evidence that Mr. Finkle had, in fact, been adjudicated mentally defective or committed to a mental institution.

Sale on February 7, 1999 to James Finkle: Gun World "failed to provide the type and number of transferee's identification as required by Item 11a of Form 4473."[3] Notice of Revocation of License at ¶ 4. Although the sale occurred on February 7, 1999, the Form 4473 was completed on February 3, 1999. The information that was omitted on the Form 4473 for the sale on February 7, 1999 (type and number of identification) was on the other Form 4473 completed at the time (for the sale of the firearm on February 3). Affidavit of Elizabeth Rodgers at ¶ 4.

Sale to Edward Thomas (2/26/99): Gun World "failed to provide the transferor's signature, transferor's title and transaction date as required by Items 22, 23 and 24 of Form 4473."[4] Notice of Revocation of License at ¶ 6. The name of the transferor and the date of the transaction were stated on the

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[3] 27 C.F.R. § 478.124(c)(3)(i) requires only the "type of identification used"; there is no requirement to include the "number" of the identification document.

[4] 27 C.F.R. § 478.124(c)(5) requires only that the licensee "sign and date the form"; there is no requirement that the licensee provide a "title."

sales receipt so that the transferor could easily be determined. Affidavit of Elizabeth Rodgers at ¶ 5. The transaction date was placed on the Form 4473 by the transferee. *Id.*

Sale to Robert Kline (3/1/99): Gun World "failed to provide the transferor's signature, transferor's title and transaction date as required by Items 22, 23 and 24 of Form 4473."[5] Notice of Revocation of License at ¶ 7. The name of the transferor and the date of the transaction were stated on the sales receipt so that the transferor could easily be determined. Affidavit of Elizabeth Rodgers at ¶ 6. The transaction date was placed on the Form 4473 by the transferee. *Id.*

Sale to Rene Roman (4/30/99)(App. at 28-29): Gun World "failed to provide the name of the manufacturer and/or importer of the firearm as required by Item 15 of Form 4473." Notice of Revocation of License at ¶ 10. The model, serial number, type, and caliber were provided; the manufacturer of the firearm could only be Glock, based upon the serial number ("CTG191US"). Affidavit of Elizabeth Rodgers at ¶ 7.

Sale to Douglas Larson (5/28/99): Gun World "failed to provide the type and number of transferee's identification as required by Item 11a of Form 4473."[6] Notice of Revocation of License at ¶ 11. The consignment agreement contains both his

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[5] 27 C.F.R. § 478.124(c)(5) requires only that the licensee "sign and date the form"; there is no requirement that the licensee provide a "title."

[6] 27 C.F.R. § 478.124(c)(3)(i) requires only the "type of identification used"; there is no requirement to include the "number" of the identification document.

Illinois [Firearms Owner Identification] F.O.I.D. card number and his Illinois driver's license number. Affidavit of Elizabeth Rodgers at ¶ 8.

Sale to Steven Winsor (1/4/00): Gun World "failed to provide the type and number of transferee's identification as required by Item 11a of Form 4473."[7] Notice of Revocation of License at ¶ 13. The sales receipt indicates the type and kind of identification that Mr. Winsor used in that it has both his Illinois F.O.I.D. card number (with expiration date) and his Illinois driver's license number. Affidavit of Elizabeth Rodgers at ¶ 9.

Sale to Conrad Norwood (2/27/00): Gun World "failed to provide the type of transferee's identification as required by Item 11a of Form 4473." Notice of Revocation of License at ¶ 14. The Form 4473 contains Mr. Norwood's Illinois F.O.I.D. card number (top number) and his Illinois state ID card number (lower number). Affidavit of Elizabeth Rodgers at ¶ 10. Gun World knows from the composition and format of the numbers that the top number is an Illinois F.O.I.D. card number and that the lower number is an Illinois state ID card number. *Id.*

Sale to Dennis Haiman (2/12/00): Gun World "failed to provide the type of transferee's identification as required by Item 11a of Form 4473." Notice of Revocation of License at ¶ 15. The Form 4473 contains Mr. Haiman's Illinois F.O.I.D. card number (top number) and his Illinois driver's license number (lower number). Affidavit of Elizabeth Rodgers at ¶ 11.

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[7] 27 C.F.R. § 478.124(c)(3)(i) requires only the "type of identification used"; there is no requirement to include the "number" of the identification document.

Gun World knows from the composition of the numbers that the top number is an Illinois F.O.I.D. card number and that the lower number is an Illinois driver's license number. *Id.*

Sale to Mark Smith (2/12/00): Gun World "failed to provide the type of transferee's identification as required by Item 11a of Form 4473." Notice of Revocation of License at ¶ 16. The Form 4473 contains Mr. Smith's Illinois F.O.I.D. card number (top number) and his Illinois driver's license number (lower number). Affidavit of Elizabeth Rodgers at ¶ 12. Gun World knows from the composition of the numbers that the top number is an Illinois F.O.I.D. card number and that the lower number is an Illinois driver's license number. *Id.*

The above 12 sales occurred during the period from January, 1999 through February, 2000. During that period, Gun World prepared approximately 880 Forms 4473. Affidavit of Elizabeth Rodgers at ¶ 13. Thus, there were omissions on 1.4% of Gun World's Forms 4473. *Id.* at ¶ 15. In that same period, the Form 4473 contained 39 blocks for recording 58 items of information (for legal alien purchasers, there are an additional 4 items of information). *Id.* at ¶ 16. Thus, for approximately 880 Forms 4473, there were approximately 34,320 blocks to be completed or approximately 51,240 items of information to be provided. *Id.* at ¶ 17. On the 12 Forms 4473 on which ATF found omissions, Gun World failed to complete, or to ensure that the purchaser completed, 16 blocks, *i.e.*, to provide 19 items of information. *Id.* at ¶ 18. Accordingly, there were omissions on a miniscule .05% (5/100%) of the blocks or .04% (4/100%) of the items of information on Gun World's Forms 4473. *Id.* at ¶ 19. Those omissions were "inadvertent" and were not done "with the bad

purpose to disobey or to disregard the law." Affidavit of Barry Soskin at ¶ 8.

ARGUMENT

I.

THE MEANING OF THE TERM "WILLFULLY" IN 18 U.S.C. § 924(a)(1), AS DETERMINED BY THIS COURT IN *BRYAN v. UNITED STATES*, 524 U.S. 184 (1998), APPLIES TO § 923(e)

1. The court of appeals concluded that:

> ATF is not required to show that a gun vendor acted with a "bad purpose or evil motive before a license may be revoked or a renewal application denied." *Stein's, Inc. v. Blumenthal*, 649 F.2d 463, 467 (7th Cir.1980). Instead, ATF must "prove that the petitioner knew of his legal obligation and purposefully disregarded or was plainly indifferent to the recordkeeping requirements." *Id.* (internal citation omitted).

App. 11a-12a.

Further, the court of appeals rejected Gun World's argument that Congress, when it amended 18 U.S.C. § 923(e) in 1986 to add the word "willfully," adopted a different standard for willfulness than established in *Stein's*, *supra*, and that the interpretation of "willfully" in 18 U.S.C. § 924(a)(1) (to which Congress had also added "willfully" in the same act as it added "willfully" in § 923(e)) announced in *Bryan v. United States*, 524 U.S. 184 (1998) should be applied to 18 U.S.C. § 923(e):

> According to Gun World, the Supreme Court implicitly overruled *Stein's* in *Bryan v. United States*, 524 U.S. 184 (1998). Gun World argues that *Bryan* eliminated the "plain indifference standard" and held that willfulness requires a "bad purpose to disobey or to disregard the law." Gun World is incorrect.

App. 12a.[8]

2. Six years after *Stein's* was decided, Congress enacted the Firearms Owners Protection Act of 1986 ("FOPA"), Pub.L. 99-308, 100 Stat. 449 (1986) which, *inter alia*, added the term "willfully" to 18 U.S.C. § 923(e) (Section 103(5) of the FOPA, 100 Stat. at 453) so that it now provides in pertinent part:

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[8] Prior to 1986, the Eighth and Ninth Circuits adopted the same standard as *Stein's*. See *Lewin* v. *Blumenthal*, 590 F.2d 268 (8th Cir. 1979)("the Bureau must prove that the petitioner knew of his legal obligation and purposefully disregarded or was plainly indifferent to the recordkeeping requirements.") and *Perri* v. *Department of Treasury; Bureau of Alcohol, Tobacco and Firearms*, 637 F.2d 1332, 1336 (9th Cir. 1981)(a willful violation "is established when a dealer understands the requirements of the law, but knowingly fails to follow them or was indifferent to them."

The Fourth Circuit adopted a different standard:

> "'[W]illful' means action taken knowledgeably by one subject to the statutory provisions in disregard of the action's legality. No showing of malicious intent is necessary. A conscious, intentional, deliberate, voluntary decision properly is described as willful, 'regardless of venal motive.'"

Prino v. *Simon*, 606 F.2d 449, 451 (4th Cir. 1979).

> The Secretary may, after notice and opportunity for hearing, revoke any license issued under this section if the holder of such license has willfully violated any provision of this chapter or any rule or regulation prescribed by the Secretary under this chapter . . . .

The identical word was also added by Section 104(a)(1) of FOPA to 18 U.S.C. § 924(a)(1). FOPA amended § 924(a):

> to add a scienter requirement as a condition to the imposition of penalties for most of the unlawful acts defined in § 922. For three categories of offenses the intent required is that the defendant acted "knowingly"; for the fourth category, which includes "any other provision of this chapter," the required intent is that the defendant acted "willfully."

Bryan, *supra*, 524 U.S. at 188.

In view of the distinction between "knowing" and "willful" violations, *Bryan*, *supra*, approved a jury instruction which defined "willfully" in 18 U.S.C. § 924(a)(1) as follows:

> "A person acts willfully if he acts intentionally and purposely and with the intent to do something the law forbids, that is, with the bad purpose to disobey or to disregard the law. Now, the person need not be aware of the specific law or rule that his conduct may be violating. But he must act with the intent to do something that the law forbids."

524 U.S. at 190.

The *Bryan* definition of "willfully" is equally applicable in both criminal and civil proceedings. *Commissioner* v. *Keystone Consol. Industries, Inc.*, 508 U.S. 152 (1993) held that it "is a 'normal rule of statutory construction' (citation omitted) that 'identical words used in different parts of the same act are intended to have the same meaning' (citation omitted)." 508 U.S. at 159. See also *Brown v. Gardner*, 513 U.S. 115, 118 (1994)("there is a presumption that a given term is used to mean the same thing throughout a statute").

Under the Gun Control Act of 1968 ("GCA")(Chapter 44 of Title 18, § 921 *et seq.*), the single meaning rule applies with even greater force because the "willfully" requirement was established in both the criminal penalties provision of the GCA (§ 924(a)(1)) and the license revocation provision of the GCA (§ 923(e)) by the same act of Congress, the FOPA. See FOPA Sections 103(5) and 104(a)(1).

3. Although *Bryan* mentioned *Stein's*, noting that, in *Stein's*, "the licensee had knowledge of the law" and that the case "support[s] the notion that disregard of a known legal obligation is sufficient to establish a willful violation," 524 U.S. at 198, that reference was not an approval of the full holding in *Stein's*. Rather, a careful reading of *Bryan* reveals that this Court did not adopt the holding of *Stein's* to the extent *Stein's* approved a "plain indifference" standard.

The context in which this Court discussed *Stein's* was the petitioner's argument that the Government had to prove not merely "knowledge that the conduct is unlawful" (524 U.S. at

196), but that he had knowledge of the specific statute he was charged with violating (the "federal licensing requirement," 524 U.S. at 190).[9] The petitioner argued that a "a more particularized showing is required" (524 U.S. at 192), *i.e.*, not merely that the conduct was unlawful, but that it violated a specific statute. To support his argument, the petitioner contended that:

> at the time FOPA was passed, the "willfulness" requirements in other subsections of the statute — §§ 923(d)(1)(C)-(D) — had uniformly been interpreted by lower courts to require knowledge of the law . . . .

524 U.S. at 196.

In rejecting the argument that the Government had to prove that the petitioner had knowledge of the specific statute he was charged with violating, this Court first noted that "the lower courts had come to no such agreement" and that "some courts had stated that willfulness in § 923(d)(1) is satisfied by a disregard of a known legal obligation, [footnote] . . . ." *Id.* at 196-97. The footnote stated: "See, *e.g.*, *Perri v. Department of the Treasury*, 637 F.2d 1332, 1336 (CA9 1981); *Stein's Inc. v. Blumenthal*, 649 F.2d 463, 467-468 (CA7 1980)." Further,

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[9] In the criminal context:

> to establish a "willful" violation of a statute, "the Government must prove that the defendant acted with knowledge that his conduct was unlawful." (citation omitted).

524 U.S. at 191-192.

this Court observed that, in these cases, "the licensee had knowledge of the law . . . " *Id.* This Court concluded that, "while these cases support the proposition that disregard of a known legal duty is sufficient to establish a willful violation, they in no way stand for the proposition that it is required." (emphasis added).

The "it" to which this Court was referring was knowledge of a specific legal obligation, *i.e.*, knowledge of a specific statute (or regulation). Thus, the point this Court was making was only that, to prove a willful violation in the criminal context, the Government did not have to prove knowledge of a specific statute. This Court did not suggest that, in the administrative context, ATF did not have to prove that a licensee acted "intentionally and purposely and with the intent to do something the law forbids, that is, with the bad purpose to disobey or to disregard the law."

The only lesson that can properly be drawn from *Bryan* is that ATF does not have to prove that a licensee had knowledge of the specific statute it is alleged was violated; "willfully" nonetheless requires proof that a licensee acted "intentionally and purposely and with the intent to do something the law forbids, that is, with the bad purpose to disobey or to disregard the law."

Notably absent from *Bryan* is even a passing reference to the "plain indifference" standard mentioned in *Stein's*. Indeed, in view of *Bryan*'s approval of a jury instruction defining "willfully" as requiring an intentional and purposeful act, with the intent to do something the law forbids, mere indifference would certainly not have been adequate. Thus,

Bryan approved *Stein's* only to the extent *Stein's* required proof that the licensee knew of its legal obligation and purposefully disregarded that obligation; to the extent that *Stein's* held that the Government may prove that a licensee knew of its legal obligation and was "plainly indifferent to" its legal obligation, *Bryan* rejected such an interpretation of willfulness in § 923(d)(1).

4. Congress' intent that "willfully" be interpreted in the license revocation provision of the GCA in the same fashion as in the criminal penalties provision of the GCA is emphasized by the enactment in Section 103(6)(B) of the FOPA of § 923(f)(4), which links a license revocation proceeding to a criminal proceeding:

> If criminal proceedings are instituted against a licensee alleging any violation of this chapter or of rules or regulations prescribed under this chapter, and the licensee is acquitted of such charges, or such proceedings are terminated, other than upon motion of the Government before trial upon such charges, the Attorney General shall be absolutely barred from denying or revoking any license granted under this chapter where such denial or revocation is based in whole or in part on the facts which form the basis of such criminal charges.

5. The legislative history of the FOPA also confirms the single meaning of "willfully" and "leaves no room for doubt about Congress' intent." *J. W. Bateson Co. v. Board of*

Trustees, 434 U.S. 586, 591 (1978).[10]

In Section 104(a)(1) of the FOPA, Congress added the willfulness element to the criminal penalties provision of the GCA (§ 924(a)(1), the provision interpreted in *Bryan, supra*). S.Rep. No. 98-583, 98th Cong., 2d Sess. (1984)[11] stated:

> The purpose of that change was to avoid prosecutions in cases where, for instance, a licensee carelessly committed a technical record-keeping violation or other minor, inadvertent infraction.

S.Rep. No. 98-583 at 94.

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[10] Analysis of the "purpose and legislative history" of a statute are among the "traditional tools of statutory construction" to which this Court looks "for clues of congressional intent." *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 300 (1988).

[11] In *National Rifle Ass'n v. Brady*, 914 F.2d 475, 485 (4th Cir. 1990), the Fourth Circuit observed that S.Rep. No. 98-583 was the applicable report for FOPA:

> There was no Senate Report on Pub.L. No. 99-308. S.Rep. No. 98-583 accompanied S. 914, the substantially similar predecessor to S. 49, the Senate bill which was the basis for Pub.L. No. 99-308.

914 F.2d at 485.

S.Rep. No. 98-583 should be accorded substantial weight because a "committee report represents the considered and collective understanding of those Congressmen involved in drafting and studying proposed legislation." *Zuber v. Allen*, 396 U.S. 168, 186 (1969).

S.Rep. No. 98-583 described the purpose for adding "willfully" to § 923(e) in almost identical terms: the "purpose of this change is to ensure that licenses are not revoked for inadvertant errors or technical mistakes." S.Rep. No. 98-583 at 88.

Accordingly, it is evident that Congress intended that "willfully" have the same meaning in § 924(a)(1) and § 923(e), and that, because this Court has definitively interpreted "willfully" as it means "act[ing] intentionally and purposely and with the intent to do something the law forbids, that is, with the bad purpose to disobey or to disregard the law" in § 924(a)(1), "willfully" perforce has that meaning in § 923(e).

S.Rep. No. 98-583 also confirms that Congress intended application of the *Bryan* formulation in stating that the addition of "willfully" would:

> codif[y] current case law by requiring "willful" violations of Chapter 44 as a ground for license revocation, just as a "willful" violation of Chapter 44 would preclude mandatory issuance of a license under 18 U.S.C. 923(d)(1)(C) and (D).[fn]

S.Rep. No. 98-583 at 88.

The "current case law" (which had construed § 923 as including a "willfully" element in a license revocation proceeding) is set forth in the footnote of the Senate Report; the primary case cited, and the only case quoted by the Committee Report, is *Rich v. United States*, 383 F.Supp 797 (1974):

> *See, e.g., Rich v. United States*, 383 F. Supp. 797, (S.D. Ohio, 1974) (". . . [R]evocation [for error, inadvertence, or simple ignorance of regulation] then becomes an exercise in futility if thereafter the Secretary by the plain language of Subsection 923(d) must reissue the license absent a showing of willful violation. It cannot be that Congress intended this formalistic paradox."), *Shyla v. Director, BATF*, 448 F. Supp. 409 (M.D. Pa. 1977), *Mayesh v. Schultz*, 58 F.R.D. 537 (S.D. Ill. 1973).

S.Rep. No. 98-583 at 12, n.30.

Rich explained that, if "willfulness" need not be proved by ATF, a license could be revoked for "error, inadvertence, or simple ignorance of regulation" and noted that the "Secretary has urged that 'willful' be deemed to include careless disregard . . . ." 383 F.Supp. at 800. *Rich* rejected that standard because "Congress was concerned with purposeful, intentional conduct to be punished by revocation of licenses rather than mere negligence on the part of the licensee." 383 F.Supp. at 800.

In light of the committee's citation and quotation of *Rich*, it is clear that the committee adopted the reasoning of *Rich*. Because a court's objective "is to ascertain the congressional intent and give effect to the legislative will," *Philbrook v. Glodgett*, 421 U.S. 707, 713 (1975), and that intent is expressed by S.Rep. No. 98-583, "willfully" must be interpreted to mean purposeful, intentional conduct.

6. Further supporting the argument that the construction

of "willfully" in § 924(a)(1) is equally applicable to § 923(e) is the fact that "willfully" is a term that has a long usage in the law. Thus, the "established meaning" must be applied. See *NLRB v. Amax Coal Co.*, 453 U.S. 322, 329 (1981)("Where Congress uses terms that have accumulated settled meaning under either equity or the common law, a court must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of these terms"). *Bryan, supra,* noted that generally "willfully" "differentiates between deliberate and unwitting conduct . . . ." 524 U.S. at 191. Thus, "willfully" must be interpreted to mean deliberate, not unintentional, conduct. Indeed, if mere "knowing" conduct was sufficient to prove a "willful" violation, the distinction between "knowingly" and "willfully" that Congress created in 1986 would be a nullity.[12]

A recent opinion of the United States District Court for the Eastern District of Virginia is instructive in understanding the meaning of "willfully." In *Tysinger Motor Co. v. United States,* --- F.Supp.2d ----, 2006 WL 940320 (E.D.Va. 2006),

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[12] Even after Congress amended 18 U.S.C. § 923(e) in 1986 to add the word "willfully," the Sixth and Eleventh Circuits, without giving any consideration to the amendment and its legislative history, adhered to the view of the Seventh, Eighth, and Ninth Circuits. See *Appalachian Resources Development Corp.* v. *McCabe*, 387 F.3d 461 (6th Cir. 2004)("where a licensee understands his or her legal obligations under the GCA, yet fails to abide by those obligations, his or her license can be denied or revoked on the basis that the dealer "willfully" violated the GCA.") and *Willingham Sports, Inc.* v. *Bureau of Alcohol*, Tobacco, Firearms and Exposives, 415 F.3d 1274, 1277 (11th Cir. 2005)("a showing of purposeful disregard of or plain indifference to the laws and regulations imposed on firearms dealers shows willfulness for purposes of § 923(d)(1)(c).").

the IRS (of which the ATF was once a part and then a sister agency in the Treasury Department before becoming a part of the Department of Justice) alleged that *Tysinger* failed to file a Form 8300 (reporting the acceptance $10,000 or more in cash in a business transaction) for four of eight reportable transactions. In determining that the violation was not willful, the court first noted that ~~there did not~~ need to be "proof of intent to violate the law," * at 5. The court then observed that there is "no proof that anyone at the company made a conscious decision not to report the transactions; the failures to report were simply mistakes," *id.*, and concluded: "Sloppiness is not the same as willfulness . . . ." At * 6.

II. GUN WORLD DID NOT "WILLFULLY" VIOLATE THE REGULATION

The omissions in the Forms 4473 were inadvertent errors or technical mistakes and were not done with the bad purpose to disobey or to disregard the law. Moreover, at no time was Gun World indifferent to the requirements of the law.

The evidence of Gun World which, for purposes of summary judgment, must "be believed" and from which "all justifiable inferences are to be drawn in [Gun World's] favor," *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986), was that information was omitted on 12 Forms 4473 from January, 1999 through February, 2000.

On 6 forms, Gun World omitted the type of identification used by the buyer (although the type of identification was known from another document); on 2 forms, Gun World's salesperson omitted his signature and the date of the transfer (although the information was on another

document); on 2 forms the buyer did not state whether he had ever been adjudicated mentally defective or been committed to a mental institution (although in both instances he was not and that was known to Gun World); on 1 form, Gun World omitted the initial NICS response (although the form also indicated an approval number); and on 1 form, the firearm manufacturer was not expressly stated (although it was known by the serial number and model). During that period, Gun World prepared approximately 880 Forms 4473. Affidavit of Elizabeth Rodgers at ¶ 13. Thus, there were omissions on 1.4% of Gun World's Forms 4473. *Id.* at ¶ 15. Looked at even more precisely, in the period from January, 1999 through February, 2000, the Form 4473 contained 39 blocks for recording 58 items of information (for legal alien purchasers, there are an additional 4 items of information). *Id.* at ¶ 16. Thus, for approximately 880 Forms 4473, there were approximately 34,320 blocks to be completed or approximately 51,240 items of information to be provided. *Id.* at ¶ 17. On the 12 Forms 4473 on which ATF found omissions, Gun World failed to complete, or to ensure that the purchaser completed, 16 blocks, *i.e.*, to provide 19 items of information. *Id.* at ¶ 18. Accordingly, there were omissions on a miniscule .05% (5/100%) of the blocks or .04% (4/100%) of the items of information on Gun World's Forms 4473. *Id.* at ¶ 19. Those omissions were "inadvertent" and were not done "with the bad purpose to disobey or to disregard the law." Affidavit of Barry Soskin at ¶ 8.

With the successful completion rate of 99.96%, it is apparent that Gun World was making a sincere effort to comply with the law and did not purposely or intentionally disregard its obligations. Justice Kennedy's observation about lawyers and judges is equally true of small business owners:

> We all tend toward myopia when looking for our own errors. Every lawyer and every judge can recite examples of documents that they wrote, checked, and doublechecked, but that still contained glaring errors.

Groh v. Ramirez, 540 U.S. 551, 568 (2004)(Kennedy, J., dissenting).

The minuscule omission rate reflects that Gun World did not purposely or intentionally disregard its legal obligations. Further, the fact that the correct information was on other non-ATF documents demonstrates that Gun World did not purposely or intentionally disregard its legal obligations in that it obtained the required information and simply did not place it on the Form 4473. Because there is no evidence that Gun World purposely disregarded its legal obligations, application of that standard would have resulted in reversal of the judgment of the district court.

CONCLUSION

This Court should grant this petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit to determine whether the 1986 amendment to § 923(e) adding the term "willfully" adopted a different standard of willfulness than established in *Stein's*, and thus whether "willfully" must be interpreted to mean purposeful, intentional conduct.

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August, 2006

In the
United States Court of Appeals,
for the Seventh Circuit

No. 05-2800

ARTICLE II GUN SHOP, INC., d/b/a GUN WORLD,
Plaintiff-Appellant,

v.

ALBERTO GONZALES,
Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Illinois, Eastern Division.
No. 03 C 4598-Matthew F. Kennelly, *Judge*.

Argued January 11, 2006 - Decided March 20, 2006

Before FLAUM, *Chief Judge*, and EASTERBROOK and MANION, *Circuit Judges*.

FLAUM, Chief Judge. Article II Gun Shop, Inc., doing business as Gun World ("Gun World") had its federal license to sell firearms revoked by the Bureau of Alcohol, Tobacco, and Firearms ("ATF"), based on allegations that Gun World willfully violated several reporting requirements of the Gun Control Act of 1968, 18 U.S.C. § 921 et seq. ("Act"). Gun World challenged ATF's revocation decision in federal district court,

pursuant to 18 U.S.C. § 923(f)(3). The government filed a motion for summary judgment, which the district court granted. Gun World appeals. For the following reasons, we affirm the opinion of the district court.

I. Background

Gun World has been a federally licensed firearms dealer since 1978. Barry Soskin ("Soskin") is Gun World's corporate president, secretary, treasurer, and sole director and stockholder. He has held these positions since the store opened in 1978.

ATF inspected Gun World in 1981, 1998, and 2000 for compliance with the Gun Control Act and its implementing regulations. After each inspection, ATF cited Gun World with violations of the Act, including violations of the Act's recordkeeping requirements. The Act requires a firearms dealer to fill out a "Form 4473" ("Form") whenever a firearm is sold. *See* 27 C.F.R. § 478.124(c)(2). The Form is used to record identifying information about gun purchasers and the firearms they purchase, which allows firearms to be traced and prevents transfer to persons prohibited from possessing firearms. *See id.* The 1981 inspection report showed that Gun World failed to properly complete 30 Forms. The 1998 inspection report showed that Gun World failed to properly complete 34 Forms and failed to properly maintain an acquisition and disposition book. See 27 C.F.R. § 425(e). The inspector who conducted the 1998 inspection discussed the violations with Soskin and the corrective actions Gun World would need to take.

The 2000 inspection report documented more violations: two separate straw sales; at least fifteen occasions on

which Gun World knowingly and willfully failed to obtain and record information required on the Forms; at least forty-nine occasions on which Gun World knowingly and willfully transferred firearms to legal aliens without obtaining required documentation; and at least fourteen occasions on which Gun World knowingly and willfully failed to record sales or dispositions of firearms in the acquisition and disposition book within seven days of a transfer.

On May 18, 2000, ATF's Chicago Area Supervisor, Nicholas Scouffas, warned Gun World that ATF was contemplating revoking Gun World's licence. On May 31, 2000, Gun World was given an opportunity to conference with ATF and present evidence in support of its position that its license should not be revoked. At the conference, Gun World promised to take corrective actions to prevent further violations. According to the government, however, Gun World continued to violate the Act after the May 31 conference.

On July 22, 2002, ATF issued Gun World a notice that its license was being revoked. The revocation was based on the 2000 inspection report and the store's history of violations. Gun World requested a hearing to review the revocation, pursuant to 18 U.S.C. § 923(f)(2). The hearing took place on January 29 and 30, 2003. The hearing officer sent ATF a report summarizing the evidence introduced at the hearing and his findings of fact, conclusions and recommendations. Richard Alexander ("Alexander"), ATF's Chicago Field Division Director of Industry Operations, concluded from the hearing officer's report that Gun World had willfully violated the Gun Control Act. On May 5, 2003, ATF issued a final notice of revocation to Gun World.

Gun World filed a petition with the district court, seeking de novo review of ATF's decision. See 18 U.S.C. § 923(f)(3). ATF filed a motion for partial summary judgment. ATF sought summary judgment based on ATF's finding that Gun World knowingly and willfully failed to complete fifteen Forms, in violation of 18 U.S.C. § 922(m). The district court "disregard[ed] the other violations for which Gun World was cited during the 2000 inspection and ... decide[d] whether the Form 4473 violations alone authorized ATF to revoke Gun World's license." Gun World did not deny that the fifteen violations occurred, but only that they were "willful."

Alexander, the ATF director who approved the revocation of Gun World's license, signed a declaration on February 24, 2005, stating that he would have revoked Gun World's license based solely on the Form 4473 violations. Alexander's declaration was based on the record of the proceedings before the ATF, the hearing officer's report, the evidence considered by the hearing officer, and the initial and final notices of revocation.

The district court granted ATF's motion for summary judgment, and Gun World appeals.

II. Discussion

Gun World raises three issues on appeal. First, Gun World argues that the district court erred by admitting into evidence ATF's 1981 and 1998 inspection reports, because the reports were not certified or sworn copies, as required by Federal Rule of Civil Procedure 56(e). Second, Gun World maintains that the district court should not have considered the 1981 ATF inspection report, because there is a five-year statute

of limitations for any forfeiture proceeding. Third, Gun World argues that its violations of the Gun Control Act were not "willful," because Gun World did not act with the intent to disobey or disregard the law. We are not persuaded by these arguments.

A. The 1981 and 1998 ATF Inspection Reports.

The district court based its decision in part on copies of 1981 and 1998 ATF inspection reports. The reports were attached as exhibits to the affidavit of Thomas Karmgard ("Karmgard"), an ATF attorney. Gun World argues that the district court should not have looked to these reports to evaluate the willfulness of the violations committed in 2000, because the reports were not "sworn or certified copies," as required by Federal Rule of Civil Procedure 56(e). Federal Rule of Civil Procedure 56(e) requires that, in cases involving summary judgment, "[s]worn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith." According to Gun World, "because the [1981 and 1998 inspection] reports themselves are not sworn or certified copies, they are not available to support a motion for summary judgment," regardless of whether they were sufficiently authenticated pursuant to Federal Rule of Evidence 901(b)(1).

In response, the government maintains that the reports need not be sworn or certified copies, because ATF did not revoke Gun World's license based on these reports; instead, it based the revocation on the 2000 report, as Alexander stated in his declaration. Additionally, the government maintains that even if the reports should not have been admitted, the error was harmless because Soskin admitted under oath that Gun World

had been cited by ATF in 1981 and 1998 for violations of the Act.

The district court found that the reports were admissible, and that Karmgard's personal knowledge of the matters underlying the reports was unnecessary to lay a foundation for their admissibility. Instead, Karmgard's affidavit authenticates the reports as records of ATF. See Fed. R. Evid. 901(b)(1). The district court also pointed out that Gun World does not dispute that the reports attached to the affidavit are accurate copies of the originals.

The district court properly considered the reports. The government submitted Karmgard's sworn affidavit in support of its motion for summary judgment. The affidavit authenticated the reports by establishing that they are public reports, kept in a public office, where reports of that type are kept. See Fed. R. Evid. 901(b)(1)(7) ("Public records or reports. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept."). Karmgard, as an agent of ATF, was competent to make such a statement. He swore to the authenticity of the documents attached to his affidavit, including the 1981 and 1998 reports. It was not necessary that he swear to personal knowledge of facts contained in the reports. Public records and reports are admissible as an exception to the hearsay rule, once their authenticity is established. See Fed. R. Evid. 803(8).

Gun World emphasizes that there is a distinction between a document's authenticity and its admissibility, and

argues that while the reports were properly authenticated, they still are not admissible. Gun World is correct that a document is not admissible simply because it has been authenticated. "To be admissible, documents must be authenticated by and attached to an affidavit that meets the requirements of Rule 56(e) and the affiant must be a person through whom the exhibits could be admitted into evidence." *Scott v. Edinburg*, 346 F.3d 752, 760 n. 7 (7th Cir.2003) (quoting 10A Charles Alan Wright et al., *Federal Practice & Procedure* § 2722, at 379-80 & 382-84 (1998)). Those requirements have been met in this case: the reports were authenticated by Karmgard's affidavit; the reports were attached to his affidavit, which met the requirements of Rule 56(e); and Karmgard is a person through whom the reports could be admitted into evidence, because he is an agent of ATF and is knowledgeable about ATF's recordkeeping system. Thus, the district court did not err by considering the reports.

B. Statute of Limitations

Gun World also argues that consideration of the 1981 ATF report is barred by the 5-year statute of limitations contained in 28 U.S.C. § 2462, which provides that "a proceeding for the enforcement of any ... forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued." Gun World claims that § 2462 applies to administrative proceedings as well as judicial proceedings. Additionally, Gun World maintains that the revocation of its license amounted to a "proceeding for the enforcement" of a forfeiture. Gun World concludes that "[a]s Gun World cannot be punished for acts/omissions in 1981, the grant of summary judgment was improper to the extent it was based upon the 1981

acts/omissions."

The government responds that although "ATF could not revoke Gun World's license because of" the 1981 report, "ATF and the district court were free to consider the 1981 report of violations as evidence that Gun World knew of its obligations to correctly complete Forms 4473 for the guns it sold." According to the government, "[s]tatutes of limitation put time limits on when actions may be brought; they are not evidentiary rules that blind courts from consideration of relevant facts."

We, like the district court below, agree with the government. The revocation of Gun World's license was based on its violations of the Act in 2000. The "claim first accrued" in 2000, when ATF made its 2000 report. The action was commenced within five years of this time. The fact that Gun World was also cited in 1981 and 1998 is simply evidence that Gun World had knowledge of the Act's requirements; Gun World admits as much. There is a distinction between acts that are prosecuted and acts that would be barred by the statute of limitations but are admissible to show that an act being prosecuted actually occurred. *Cf. United States v. Barnes*, 230 F.3d 311, 315 (7th Cir.2000) ("Relevant pre-limitations evidence is admissible to show the existence of a scheme to complete an illicit transaction."); *United States v. Wellman*, 830 F.2d 1453, 1464 (7th Cir.1987) (fact that mail fraud scheme and acts committed in furtherance of it may have extended over a period of time that was in part barred by the statute of limitations did not preclude evidence of those acts from being admitted to show that mailings occurring within the statutory period were in furtherance of a scheme to defraud).

C. Willfulness

Gun World's final argument is that the district court erred by determining that Gun World's violations of the Gun Control Act were willful. The parties disagree as to the meaning of "willfully" as used in 18 U.S.C. § 923(e). Gun World argues that willfulness requires a "bad purpose to disobey or to disregard the law." According to Gun World, ATF must show that Gun World's acts were more than "inadvertent error or technical mistakes." Gun World maintains that its *de minimis* number of violations in light of its sales volume (in 2000, 12 of 880 Forms contained errors) demonstrates that it did not act willfully. Finally, Gun World maintains that the errors on its Forms were not "material" because, in some cases, omitted information could be found on other documents, or, in other cases, Gun World employees knew the gun buyers and how they would respond to skipped questions.

According to the government, Gun World acted willfully if it "purposefully disregarded or was plainly indifferent to" the law. The government emphasizes that nothing in the Gun Control Act, its implementing regulations, or the case law interpreting the Act creates an exception to revocation for *de minimis* violations of the Act. Additionally, the government notes that Soskin and other Gun World employees admitted that they knew that Forms 4473 needed to be filled out completely and that ATF considered these documents critical to enforcement of the Act.

Contrary to Gun World's position, ATF is not required to show that a gun vendor acted with a "bad purpose or evil motive before a license may be revoked or a renewal application denied." *Stein's, Inc. v. Blumenthal*, 649 F.2d 463, 467 (7th

Cir.1980). Instead, ATF must "prove that the petitioner knew of his legal obligation and purposefully disregarded or was plainly indifferent to the recordkeeping requirements." *Id.* (internal citation omitted).

According to Gun World, the Supreme Court implicitly overruled Stein's in *Bryan v. United States*, 524 U.S. 184 (1998). Gun World argues that *Bryan* eliminated the "plain indifference standard" and held that willfulness requires a "bad purpose to disobey or to disregard the law." Gun World is incorrect. In *Bryan*, the defendant had been convicted of conspiring to sell firearms without a license and engaging in the sale of firearms without a license, in violation of provisions of the Gun Control Act that contained a willfulness requirement. See 18 U.S.C. §§ 922(a)(1) and 924. The defendant claimed that he had no knowledge of the Act's requirements, so that his violations could not be willful. The Court held that the defendant's bad purpose was sufficient to satisfy the willfulness requirement under the facts of that case, where the defendant had used straw purchases, filed off guns' serial numbers, and sold guns on the black market. *Bryan*, 524 U.S. at 189, 194-96, 118 S.Ct. 1939.

The *Bryan* Court recognized that this Court in *Stein's* "stated that willfulness in § 923(d)(1) is satisfied by a disregard of a known legal obligation." *Id.* at 196-97. The Court found that while cases like *Stein's* "support the notion that disregard of a known legal obligation is sufficient to establish a willful violation, they in no way stand for the proposition that it is required." *Id.* at 197-98. The *Bryan* Court did not hold that a showing of "bad purpose" is required before ATF can revoke the license of a gun dealer who violates the Act despite

knowledge of its requirements. Id. Rather, the Court simply held that a bad purpose may be sufficient to demonstrate purposeful disregard for or plain indifference to the law, where there is no evidence a party was aware of the requirements of the law. In this case, it is clear that Gun World was aware of its obligations under the Act.

Additionally, we reject Gun World's argument that its mistakes were inadvertent and *de minimis*. The record shows that Soskin was aware that the Act does not allow any *de minimis* number of violations, and he was obviously aware of the Act's requirements after being cited for numerous violations in the past. *See Stein's*, 649 F.2d at 468 ("Evidence of repeated violations with knowledge of the law's requirements has been held sufficient to establish willfulness.") (citing *Lewin* v. *Blumenthal*, 590 F.2d 268 (8th Cir.1979)). Even after Gun World was warned in 2000 that its license could be revoked based on its violations, Gun World continued violating the Act. *Cf. Breit & Johnson Sporting Goods, Inc. v. Ashcroft*, 320 F.Supp.2d 671, 678-80 (N.D.Ill.2004) (firearms dealer's repeated violations of the Gun Control Act's recordkeeping requirements, even after two ATF warning conferences, sufficient to establish "willfulness"). Gun World tries to explain why each of its violations was immaterial--either because the information sought on a Form could be found on another form or because it could be discovered by talking to Gun World employees. These explanations are irrelevant. The revocation provision applies regardless of whether a firearms dealer's failure to comply with the Act actually results in illegal possession or usage of a firearm or an inability to track a firearm that has been sold.

III. Conclusion

For the foregoing reasons, we AFFIRM the opinion of the district court.

MANION, Circuit Judge, dissenting. Because I conclude that the government is not entitled to summary judgment, I respectfully dissent. The central question here is whether Gun World's recordkeeping violations were willful under 18 U.S.C. § 923(e). I agree with the court that this question is governed by *Stein's, Inc., v. Blumenthal*, 649 F.2d 463, 467 (7th Cir.1980). Thus, to show willfulness and succeed in revoking Gun World's dealer license, the government must "prove that [Gun World] knew of [its] legal obligation and purposefully disregarded or was plainly indifferent to the recordkeeping requirements." *Id.* (internal quotation omitted). Gun World has taken the first half of the willfulness test, i.e., knowledge, off the table; it conceded that it knew of its duty to fully complete the government's firearm transaction forms. It is also important to note that the government and this court regard the 1981 and 1998 reports simply as evidence of Gun World's knowledge of the Act's requirements. This dispute therefore turns on whether Gun World acted with purposeful disregard or plain indifference when it left a small number of boxes blank on 12 of the 880 forms it filled out between January 1999 and February 2000.

The government's evidence on this crucial point, viewed in a light most favorable to Gun World, as it must be in this situation, fails to show that the government is entitled to summary judgment. *See United States v. Rode Corp.*, 996 F.2d 174, 178 (7th Cir.1993); Fed.R.Civ.P. 56(c). The evidence supporting the government's summary judgment motion is confined to a few spaces left blank on 12 forms. During the

period in question, Gun World was responsible for some 51,240 pieces of information on the 880 forms, and it omitted 19 of those pieces. On its face, that appears to be a very positive compliance ratio: 51,221 out of 51,240 (99.96%). Gun World's substantial compliance on the 12 forms in question and total compliance on the rest is a strong indicator that Gun World was not disregarding or being indifferent to its obligations. If, with the 12 forms, the government had submitted an affidavit from an informant, for example, attesting to the fact that Gun World left a box blank at the informant's request, then the summary judgment would be appropriate. Here, however, there are only the forms themselves, and, in a light most favorable to Gun World, these 12 substantially-completed forms upon which the government seeks to revoke Gun World's license, do not prove, for summary judgment purposes, that Gun World purposefully disregarded or was plainly indifferent to the recordkeeping requirements. One willful violation could put them out of business, but several inadvertent ones should not.

To bolster its case, the government cites its 1981 and 1998 inspection reports, contending that the past violations recounted therein and the corresponding warnings establish Gun World's knowledge of its recordkeeping obligations. However, Gun World does not dispute the knowledge prong of the willfulness test, and the admission of those reports was only to evidence knowledge. In any event, these past violations as well as later Gun World lapses (i.e., after February 2000) raised by the government do not conclusively show that the 12 violations for which the government seeks to revoke Gun World's license were triggered by purposeful disregard or plain indifference. A rational trier of fact could find, that despite other shortcomings, the 12 violations were caused by *something less than*

purposeful disregard or plain indifference, such as a genuine mistake that, despite all diligence, slipped through undetected. *Cf. Groh v. Ramirez*, 540 U.S. 551, 556 (2004) (Kennedy, J., dissenting) ("Every lawyer and every judge can recite examples of documents that they wrote, checked, and doublechecked, but that still contained glaring errors.").

The entire willfulness inquiry of § 923(e) illustrates that this is not a strict liability situation, and, thus, cases built upon nothing more than repeated omissions should not automatically result in revocation at the summary judgment stage. Here, the evidence and all reasonable inferences therefrom, viewed in a light most favorable to Gun World, do not prove that Gun World purposefully disregarded or was plainly indifferent to the recordkeeping requirements. It is a factual question to be resolved at a trial/evidentiary hearing in accordance with 18 U.S.C. § 923(f)(3). *See Stein's*, 649 F.2d at 466 (explaining when a "trial de novo" is appropriate). I would thus reverse the grant of summary judgment.

I should note that apparently this case began with much more than has been funneled into this appeal. As the court mentions, the 2000 inspection report detailed a number of violations, including two straw sales, not at issue here. These are significant accusations which may explain why the ATF engaged in such an extensive investigation. But all of these charges were effectively dropped, leaving a case involving 19 blank spaces on 880 forms. The ATF director by declaration assured the court that he would have revoked Gun World's license solely on these 19 Form 4473 violations. There may be good reasons to revoke the license that Gun World has held for over 25 years, but because the Form 4473 violations are the

only basis for revocation, the government must present actual evidence of willfulness, or else the trier of fact should decide.

A true Copy:
Teste:

_____

Clerk of the United States Court of Appeals for the Seventh Circuit

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

May 16, 2006

Before

Hon. JOEL M. FLAUM, *Chief Judge*
Hon. FRANK H. EASTERBROOK, *Circuit Judge*
Hon. DANIEL A. MANION, *Circuit Judge*

ARTICLE II GUN SHOP, INC. d/b/a GUN WORLD, Plaintiff-Appellant,		Appeal from the United States
No. 05-2800	v.	District Court for the Northern District of Illinois, Eastern Division.
		No. 03 C 4598
ALBERTO GONZALES Defendant-Appellee		Matthew F. Kennelly, Judge.

ORDER

On consideration of the petition for rehearing and petition for rehearing en banc filed in the above-entitled case on May 2, 2006, by plaintiff-appellee, no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing be, and the same is hereby DENIED.

Supreme Court, U.S.
FILED
06-296 AUG 29 2006
OFFICE OF THE CLERK

No. 06-

IN THE

Supreme Court of the United States

ARTICLE II GUN SHOP, INC.,
d/b/a GUN WORLD

Petitioner

v.

ALBERTO GONZALES,

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

SUPPLEMENTAL APPENDIX

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United States District Court

Northern District of Illinois
Eastern Division.

Article II Gun Shop **JUDGMENT IN A CIVIL CASE**

v. Case Number: 03 C 4598

Ashcroft

Decision by Court. This action came to trail or hearing before the Court. The issues have been tried or heard and a decsion has been rendered.

IT IS HEREBY ORDERED AND ADJUDGED that the Court grants defendant's motion for summary judgment. Judgment is entered in favor of defendant.

Michael W. Dobbins, Clerk of Court

Date: 3/25/2005 /s/ Olga Rouse, Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ARTICLE II GUN SHOP, INC., d/b/a Gun World	)	
Plaintiff,	)	
vs.	)	Case No. 03 C 4598
JOHN ASHCROFT, United States Attorney General,	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

MATTHEW F. KENNELLY, District Judge:

Pursuant to 18 U.S.C. § 923(f)(3), Article II Gun Shop, Inc., d/b/a, Gun World, petitions for *de novo* judicial review of the Bureau of Alcohol, Tobacco, and Firearms' ("ATF") decision to revoke Gun World's federal license to sell firearms. The government contends that it was authorized to revoke Gun World's license under 18 U.S.C. § 923(e), as the dealer willfully violated several requirements of the Gun Control Act. This case is before the Court on defendant's motion for summary judgment, which is limited to Gun World's alleged record keeping violations. For the reasons stated below, the Court grants the government's motion.

Facts

Gun World has been a federally licensed firearms dealer since 1978. Barry Soskin has owned and worked at the store, located in Bensenville, Illinois, since that time. Soskin is Gun World's corporate president, secretary, and treasurer, as well as the sole director and shareholder. In addition to Soskin, Gun World employs several employees, most of whom have worked at the store for years.

ATF inspected Gun World in 1981, 1998, and 2000 for compliance with the Gun Control Act of 1968, 18 U.S.C. §§ 921 *et seq.*, and the regulations promulgated under the Act. On each occasion, ATF cited Gun World with numerous violations of the Act, including violations of the Act's record keeping requirements. Though the ultimate decision to revoke Gun World's license was based on violations discovered during the 2000 inspection, we review the store's history of violations to provide a context for analyzing the later violations.

The 1981 inspection disclosed that Gun World had failed to properly complete thirty ATF Forms 4473[1] in violation

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[1] ATF uses Form 4473 to record identifying information about gun purchasers and the guns they buy, in order to facilitate the tracing of firearms involved in crimes and to prevent gun transfers to persons who are prohibited from possessing guns. Def's 56.1 Stmt. ¶ 1. The purchaser is required to report his name, sex, height, weight, race, address, date of birth, and place of birth. The purchaser must also respond to a series of certification questions. The dealer is prohibited from selling a gun to a prospective buyer who responds "yes" to certain certification questions. *See* 18 U.S.C. § 922(d). This prohibition includes selling guns to 1) persons under indictment or who have been convicted of a felony; 2) fugitives from justice; 3) illegal drug users; 4) persons who have been adjudicated

of 27 C.F.R. § 478.124(c)(2). Final Notice of Revocation ¶ 3. Specifically, Gun World failed to have purchasers properly indicate their correct dates of birth on the forms. Soskin signed the ATF's report of violations and received a copy. ATF did not initiate revocation of Gun World's license at that time.

In 1998, ATF discovered that Gun World had failed to properly complete thirty-four Forms 4473 in violation of the Act and its regulations. Final Notice of Revocation ¶ 4. Among these violations were twenty-one instances in which Gun World transferred guns without obtaining answers to all of the necessary certification questions. Def's 56.1 Stmt. ¶ 29. On one occasion, Gun World transferred a gun to someone who admitted that he was illegally in the United States. *Id.* ¶ 30. Additionally, the 1998 inspection revealed that Gun World had failed to properly maintain an acquisition and disposition book in violation of 27 C.F.R. § 425(e). Final Notice of Revocation ¶ 4. Once again, Soskin signed and received a copy of the report of violations. The inspector also reviewed the report of violations with Soskin and discussed what corrective action Gun World needed to take. Soskin Dep. at 47. The 1998 report

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mentally defective or who have been committed to a mental institution; 5) persons dishonorably discharged from the armed forces; 6) illegal aliens; 7) persons who have renounced their U.S. citizenship; 8) persons subject to domestic restraining orders; and 9) persons convicted of domestic violence. In addition, the form requires the seller to answer several questions identifying the type of firearm to be transferred, the type and number on the buyer's identification, and information regarding the results of a required background check. Finally, the purchaser must re-certify the answers given to the certification questions immediately prior to the transfer of the gun (i.e., after the mandatory waiting period imposed by Illinois has expired). The form comes with instructions for completion. Def's 56.1 Stmt at ¶ 2.

indicates that "[t]he licensee will ensure the forms will be properly completed in the future." 1998 Report of Violations. ATF again refrained from revoking Gun World's license.

The violations that ultimately led ATF to revoke Gun World's license were discovered during the 2000 compliance inspection. Five counts of violations were set forth in the final notice of revocation, including two separate straw sales; at least fifteen occasions on which Gun World knowingly and willfully failed to record and obtain required information on ATF Forms 4473 in over-the-counter sales of firearms to non-licensees;[2] at least forty-nine occasions on which Gun World knowingly and willfully transferred firearms to aliens legally in the United States without obtaining sufficient acceptable documentation that the transferees had resided in the State of Illinois continuously for at least 90 days prior to the transfer; and at least fourteen occasions on which Gun World knowingly and willfully failed to record in the acquisition and disposition book the sale or other disposition of firearms not later than seven

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[2] These violations include transferring guns to persons who did not indicate whether they had ever been adjudicated mentally defective or been committed to a mental institution; transferring guns without noting the type and/or number of the identification documents provided by the transferee; transferring guns without providing the name of the gun's manufacturer; transferring guns without properly noting the initial result of the background check; and transferring guns without the employee certifying that he believed the transfer to be lawful. Gun World additionally failed to complete a Form 4473 for guns sent out for repair to an unlicensed individual, and returned to the owner a gun on consignment without obtaining a Form 4473. *See* Def's 56.1 Stmt. ¶¶ 38-44. Finally, Gun World transferred a gun to someone who indicated on Form 4473 that he was a fugitive from justice, though it is unclear to the Court whether this particular violation constitutes one of the fifteen record keeping violations at issue.

days following the date of such transfers.

These violations prompted ATF's Chicago Area Supervisor, Nicholas Scouffas, to warn Gun World on May 18, 2000 that ATF was contemplating the revocation of Gun World's license. At a conference on May 31, 2000, Gun World was afforded the opportunity to present evidence as to why its license should not be revoked. Despite Soskin's renewed promises of corrective action at the conference, Gun World continued to violate the record keeping provisions even after this date.[3]

On July 22, 2002, ATF issued to Gun World a notice of revocation of its license. Gun World requested a hearing to review the revocation in accordance with 18 U.S.C. § 923(f)(2). Hearing Officer Jimmy Skinner conducted the hearing, held on January 29-30, 2003. Skinner forwarded to Richard Alexander, ATF's Chicago Field Division Director of Industry Operations, a report summarizing the evidence introduced at the hearing, as well as his findings of fact, conclusions, and recommendations. After reviewing the evidence, Alexander determined that Gun World had willfully violated the Gun Control Act, and on May 5, 2003, he issued a final notice of revocation. Alexander concluded that Gun World was familiar with the record keeping requirements imposed on federal firearms licensees and that it had "been plainly indifferent to, and in many instances ha[d]

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[3] The post-conference violations included transferring a gun without obtaining the transferee's signature verifying that his answers to the certification questions remained true at the time of the actual transfer, failing to note a transferee's complete name, and transferring a gun without obtaining a correct birth date. Def's 56.1 Stmt. ¶¶ 47-50.

acted in purposeful disregard of, these record keeping and other requirements." Final Notice of Revocation at III ¶¶ 1-2.

The government seeks summary judgment based only on to Alexander's finding that Gun World knowingly and willfully failed to complete fifteen ATF Forms 4473 in violation of 18 U.S.C. § 922(m) and 27 C.F.R. § 178.124.[4] The Court will therefore disregard the other violations for which Gun World was cited during the 2000 inspection and will decide whether the Form 4473 violations alone authorized ATF to revoke Gun World's license. In a signed declaration dated February 24, 2005, Alexander averred that he would have revoked Gun World's license based solely on the Form 4473 violations. Alexander Declaration ¶ 11. In reaching this decision, he reviewed the record of the proceedings before ATF, including the notice of revocation, the Hearing Officer's report, the presentations and evidence, and the final notice of revocation, and he also considered the similar violations Gun World had been cited for during the 1981 and 1998 inspections. *Id.* ¶¶ 8, 10. Gun World has made no objection to the government's submission of Alexander's declaration or the Court's reliance upon it.

Standard of Review

The Gun Control Act permits a party whose license has

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[4] Gun World contends that the government's statement of facts references only twelve of these instances, and thus for the purpose of summary judgment, only twelve Form 4473 violations are at issue. It is not clear to the Court that the government only alleges violations on twelve specific forms, nevertheless, the Court's analysis and holding is unaffected by this small difference in the number of forms.

been revoked by ATF to petition a district court for a *de novo* judicial review of the revocation. 18 U.S.C. § 923(f)(3). Consistent with its charge to review the matter *de novo,* the Court may give the Attorney General's findings and decision "such weight as it believes they deserve," but need not accord any particular deference to those findings. *Stein's Inc. v. Blumenthal,* 649 F.2d 463, 467 (7th Cir.1980). The decision may be upheld if the Court determines that the evidence supporting the decision is "substantial." *Id.* Though the Court is free to make an independent determination as to whether Gun World violated the Gun Control Act, if we conclude that it did violate the Act, the Court must defer to the government's selection of a penalty. *Id.* at 464 n. 2 ("Selecting an appropriate penalty for the violations found is a matter committed to the Secretary's discretion."). Thus, the Court may determine only whether the Attorney General's choice of a penalty was "authorized." 18 U.S.C. § 923(f)(3); *Stein's,* 649 F.2d at 464 n. 2.

Summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed.R.Civ.P. 56(c). The Court must construe the facts and draw reasonable inferences in the non-moving party's favor. *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 255 (1986). However, the non-moving party cannot rest on the pleadings alone but must instead affirmatively demonstrate that there is a genuine issue of material fact for trial. *Celotex Corp. v. Catrett,* 477 U.S. 317, 323 (1986). If there are no genuine disputes regarding material facts, the Court may properly grant summary judgment on the basis of the administrative record without conducting an evidentiary hearing. *See Cucchiara v. Secretary of Treasury,*

652 F.2d 28, 30 n.1 (9th Cir.1981).

Discussion

In accordance with § 923(e), ATF may revoke a gun dealer's license after notice and opportunity for a hearing "if the holder of such license has willfully violated any provision of [the Gun Control Act] . . . or any rule or regulation prescribed by the Attorney General" under the Act. 18 U.S.C. § 923(e). A single violation is a sufficient basis for revoking a license. *Appalachian Resources Dev. Corp.* v. *McCabe*, 387 F.3d 461, 464 (6th Cir.2004); *Breit & Johnson Sporting Goods, Inc.*, 320 F.Supp.2d 671, 678 (N.D.Ill.2004); *DiMartino v. Buckles*, 129 F.Supp.2d 824, 827 (D.Md.2001), *aff'd by unpublished order DiMartino v. Buckley*, 19 Fed. Appx. 114 (4th Cir.2001). A dealer violates the Act and its regulations if it transfers a gun without obtaining a completed Form 4473 or if it knows or has reasonable cause to believe that the form contains false statements. 18 U.S.C. §§ 922(m) & 924(a)(1)(A); 27 C.F.R. §§ 478.124(a) & (c), 478.125(e). Because Gun World does not dispute that it violated the Act by failing to ensure that all ATF Forms 4473 were properly completed, the principal issue the Court must decide is whether the violations were willful.

The parties disagree over the definition of "willfully" as used in § 923(e). The government contends that the statute does not require ATF to show that Gun World acted with a bad purpose or evil motive, but merely that it purposefully disregarded or was plainly indifferent to the law. Gun World, by contrast, maintains that willfullness requires more than simply that a licensee was indifferent to the law. In support, Gun World

cites *Bryan v. United States*, 524 U.S. 184 (1998), arguing that *Bryan* dictates that "willfully" requires a "bad purpose to disobey or to disregard the law." *Id.* at 190 n. 9.

Consistent with the government's proposed interpretation, the majority of circuits, including the Seventh Circuit, have held that the willfulness requirement in § 923 is met when the licensee "knew of [its] legal obligation and purposefully disregarded or was plainly indifferent to" its obligations under the Gun Control Act. *Stein's*, 649 F.2d at 467; *see also McCabe*, 387 F.3d at 464 (citing cases). The Supreme Court's decision in *Bryan* has no impact on our reading of the statute. *See McCabe*, 387 F.3d at 465. In *Bryan*, the Court affirmed a defendant's conviction for dealing in firearms without a license in violation of 18 U.S.C. § 924(a)(1). The Court held that when used in the criminal context, a willful act "is one undertaken with a 'bad purpose,'" that is, "'with knowledge that his conduct was unlawful.'" *Id.* at 191, 192 (quoting *Ratzlaf v. United States*, 510 U.S. 135, 137 (1994)). But the Court specifically acknowledged that "disregard of a known legal obligation is sufficient to establish a willful violation." *Id.* at 197-98 and n. 26 (citing *Stein's*, 649 F.2d at 467-68). Thus, even if *Bryan's* holding applies in the civil context, it does not disturb the holdings of *Stein's* and other cases to the effect that proof that the licensee knew its legal responsibilities under the Gun Control Act and purposefully disregarded or was plainly indifferent to them is sufficient.

Gun World contends that the violations alleged in the 1981 and 1998 inspection reports are inadmissible and therefore immaterial to analyzing the willfullness of the 2000 violations. First, Gun World notes that none of these older violations were

mentioned in the initial notice of revocation, which, it argues, means that they were not the basis for the administrative revocation. These violations, however, were mentioned in the final notice of revocation and clearly factored into ATF's decision. Moreover, § 923 specifically permits the Court to consider "any evidence submitted by the parties to the proceedings whether or not such evidence was considered at the hearing." 18 U.S.C. § 923(f)(3). Next, Gun World maintains that the 1981[5] and 1998 inspection reports attached to the affidavit of Thomas Karmgard, an ATF attorney, are inadmissible because the affidavit is not based on personal knowledge of the substance of the reports and the reports are not sworn or certified copies. Personal knowledge of the matters underlying the reports is unnecessary to lay the foundation for their admissibility. Karmgard's affidavit sufficiently authenticates the reports as records of ATF, *see* Fed.R.Evid. 901(b)(1), and Gun World does not dispute that the reports are accurate copies of the originals. Finally, Gun World argues that consideration of the 1981 report is barred by the statute of limitations. Though the statute of limitations would bar the government from commencing an action with regard to the 1981 violations, it has no impact whatsoever on the Court's ability to consider the older violations for the purpose of determining whether Gun World knew of its legal obligations. Accordingly, Gun World's previous violations are

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[5] In addition, Gun World contends that the facts concerning the 1981 violations are disputed. Citing Soskin's deposition testimony that the forms at issue did contain date of birth information, Gun World seems to imply that the mistakes on the forms did not constitute violations. Soskin's testimony immediately following the statement cited by Gun World belies this contention, as Soskin agreed that the way the birth dates were written on the forms constituted a violation. Soskin Dep. at 45.

admissible as evidence that, among other things, Gun World knew what the law required when it committed the 2000 violations. *See Breit,* 320 F.Supp.2d at 679.

Gun World's nearly twenty-year history of repeatedly violating record keeping requirements concerning the use of Forms 4473 leaves no doubt that Gun World's violations in 2000 were "willful" as the term is used in § 923(e). Courts have consistently held that evidence of repeated violations committed with knowledge of the law's requirements is sufficient to establish willfulness. *Stein's,* 649 F.2d at 468; *Breit,* 320 F.Supp.2d at 678; *Cisewski v. Dep't of the Treasury, Bureau of Alcohol, Tobacco & Firearms,* 773 F.Supp. 148, 152 (E.D.Wis.1991); *Al's Loan Office, Inc. v. U.S. Dep't of the Treasury, Bureau of Alcohol, Tobacco & Firearms,* 738 F.Supp. 221, 224 (E.D.Mich.1990).

ATF cited Gun World for violations involving improperly completed Forms 4473 in 1981, 1998, and 2000, and the company persisted in committing such violations even after a warning conference was held in May 2000. Moreover, it is undisputed that Soskin and his employees were aware of what the Gun Control Act required at the time of the 2000 inspection. After each of the previous inspections, ATF inspectors discussed the violations with Soskin, and he signed each report of violations, promising to ensure that Forms 4473 would be properly completed in the future. Elizabeth Rodgers, Gun World's office manager and employee of twenty-five years, confirmed that the store knew its license was dependent upon following the regulations and that failing to obtain sufficient answers to the certification questions on Forms 4473

constituted a serious violation. Rodgers Dep. at 29-30, 41. Yet despite this knowledge, Gun World failed to take the necessary corrective action, thereby demonstrating its indifference to the Act's requirements.

Gun World attempts to refute the government's contention that its Form 4473 violations in 2000 were willful by characterizing them as *de minimis* violations in light of its sales volume. Gun World points out that of the ATF Forms 4473 it prepared during the period from January 1999 to February 2000 (the period during which the cited violations occurred), only twelve of 880 contained errors. This relatively small error rate, it argues, reflects that the violations were merely inadvertent errors or technical mistakes. Gun World, however, has failed to cite authority supporting the idea that repeated but purportedly minor errors should be excepted from the general rule that the willfulness requirement is satisfied by repeated violations. Existing case law supports the opposite conclusion. *See Cisewski*, 773 F.Supp. at 151-52 ("While these repeated episodes could be characterized as minor or insignificant, these repetitions, nevertheless, undermine petitioner's claim to have corrected his ways."); *see also Stein's*, 649 F.2d at 468 (rejecting plaintiff's argument that violations were unintentional, unavoidable, and *de minimis*).

Moreover, the fact that courts hold that a single violation of the Gun Control Act is sufficient to revoke a dealer's license counsels against finding that *de minimis* violations do not meet the willfulness requirement. Soskin himself testified that he knew there was no *de minimis* number of violations that Gun World could legally commit. Soskin Dep. at 241. The rationale behind the Gun Control Act's record

keeping requirements is at least in part to ensure that firearms do not end up in the hands of persons who are legally prohibited from owning such weapons. A dealer with a history of repeat violations, even if claimed to be careless, runs afoul of the Act's requirements to the same extent as a dealer that commits similar errors with a bad purpose. Though the 2000 violations might seem insignificant if viewed in a vacuum, when coupled with Gun World's history of similar violations, they demonstrate that Gun World was plainly indifferent to the Gun Control Act's record keeping requirements.

Gun World also suggests that the Form 4473 violations are an insufficient basis for revocation because they are immaterial in light of the government's purported justification for requiring complete and accurate Forms 4473. Gun World reviews each violation separately, arguing that any defects in the forms were cured by the existence of correct information on other non-ATF documents (e.g., sales receipts) or facts known by Gun World employees. The statute, however, contains no materiality requirement, and Gun World has cited no case law to support its argument that a dealer should be excused from compliance with the law if it can provide evidence that firearms sold without proper Form 4473 disclosures did not end up in the hands of persons prohibited from purchasing them. Allowing an excuse of this sort would defeat the purpose of requiring Form 4473 in the first place.

In sum, Gun World has failed to raise a genuine issue of material fact as to whether its violations were willful. Substantial evidence exists to support ATF's conclusion that Gun World willfully violated the record keeping requirements of the Gun Control Act and its regulations.

The only remaining question is whether ATF was authorized to revoke Gun World's license based on these willful violations. Alexander submits that he would have revoked Gun World's license based solely on the fifteen Form 4473 violations. Were penalty selection subject to *de novo* review, the Court would not necessarily impose the same sanction as the one chosen by ATF. The Court, however, may determine only whether the government's choice of a sanction was authorized. 18 U.S.C. § 923(f)(3); *Stein's*, 649 F.2d at 464 n. 2. Because ATF is authorized to revoke a dealer's license based on a single violation of the requirements promulgated under the Gun Control Act, the Court concludes that ATF was authorized to revoke Gun World's license based on the Form 4473 violations.

Conclusion

For the reasons stated above, the Court grants the defendant's motion for summary judgment [docket no. 9]. The Clerk is directed to enter judgment in favor of the defendant.

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MATTHEW F. KENNELLY
United States District Judge

Date: March 25, 2005

United States District Court, Northern District of Illinois

JUDGE	Matthew F. Kennelly
CASE NUMBER	03 C 4598
CASE TITLE	Article II Gun Shop, Inc. V. Ashcroft
DATE	4/15/2005

For the reasons stated below, the Court denies plaintiff's motion to alter or amend the judgment [docket # 25-1].

STATEMENT

Article II Gun Shop, Inc., d/b/a, Gun World, has filed a motion to alter or amend the judgment entered on March 29, 2005. In that judgment, the Court granted the government's motion for summary judgment, finding that the government was authorized to revoke Gun World's federal license to sell firearms under 18 U.S.C. § 923(e), as Gun World had willfully violated the record keeping requirements of the Gun Control Act.

Gun World more or less repeats in this motion the same arguments it made in response to the government's motion for summary judgment; namely, that the definition of "willfulness" proposed by the government and adopted by the Court is contrary to Supreme Court precedent and a senate committee report. Gun World contends that the willfulness requirement of § 923(e) is not met by demonstrating that the dealer was indifferent to the Act's requirements (though it now appears to acknowledge that acting with purposeful disregard of the

requirements would be sufficient). The Court is satisfied that it applied the correct willfulness standard and accordingly denies Gun World's motion to alter or amend the judgment.

As explained in the Court's decision, the prevailing view among the Circuits is that the willfulness requirement is met when the licensee "knew of [its] legal obligation and purposefully disregarded or was plainly indifferent to" its obligations under the Gun Control Act. *Stein's, Inc. v. Blumenthal*, 649 F.2d 463, 467 (7th Cir. 1980); *see also Appalachian Resources Development Corp. v. McCabe*, 387 F.3d 461, 464 (6th Cir. 2004) (citing cases). Contrary to Gun World's contention, this reading of the statute was not altered by *Bryan* v. *United States*, 524 U.S. 184 (1998). *See Article II Gun Shop, Inc. v. Ashcroft*, *No.* 03 C 4598, 2005 WL 701053, *4 (ND. .Ill. Mar. 25, 2005). Gun World seems to suggest that because *Bryan* does not explicitly condone the "plainly indifferent" language *of Stein's*, it must have disapproved of this definition of the willfulness standard. That is *a non sequitur*, and in any event Gun World's reasoning is not supported by existing precedent. Moreover, Gun World has not articulated what it views to be the difference between plain indifference to a known legal standard and purposeful disregard of that standard. By our use of the term "indifference," the Court did not mean to suggest that Gun World did not act with a purposeful disregard of the requirements of the law when it committed the violations. The crux of our holding was that "Gun World's nearly twenty-year history of repeatedly violating record keeping requirements concerning the use of Forms 4473 leaves no doubt that Gun World's violations in 2000 were "willful" as the term is used in § 923(e)." *Id.* at *5.

In addition, the Court has already rejected Gun World's contention that its violations were inadvertent errors. Gun World was well aware of the requirements promulgated by the Gun Control Act and had a repeat history of this type of record keeping violations, which belies its characterization of the violations as inadvertent errors or technical mistakes. In its motion, Gun World again attempts to argue that the minuscule number of its violations demonstrates that it did not act willfully. The Court, however, has already sufficiently addressed this issue and arrived at a different conclusion. *See id,* Gun World's motion provides no basis to revisit the issue.

Finally, Gun World asserts that the Court erred by admitting the 1981 and 1998 ATF inspection reports submitted by the government in support of summary judgment because the reports were not sworn or certified copies as required by Federal Rule of Civil Procedure Rule 56(e). The Court disagrees. The affidavit of ATF's Thomas Karmgard sufficed to establish that the reports were sworn copies. *See* Karmgard Affid. ¶¶ 9- 10, 13.